Supreme Court, U.S.
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No. 03-674

IN THE

# Supreme Court of the United States

KEYSE G. JAMA,

*Petitioner*,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

*Respondent*.

**On Writ Of Certiorari To**
**The United States Court Of Appeals**
**For The Eighth Circuit**

## JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED NOVEMBER 3, 2003**
**CERTIORARI GRANTED FEBRUARY 23, 2004**

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## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

June 28, 2001—Petitioner's petition for writ of habeas corpus filed in United States District Court for the District of Minnesota.

July 9, 2001—Magistrate Judge's Order directing respondent to show cause why habeas corpus should not be granted.

July 30, 2001—Respondent's response to habeas corpus petition filed in District Court.

July 30, 2001—Respondent's motion to dismiss and memorandum of law in support thereof (with exhibits) filed in District Court.

September 7, 2001—Petitioner's memorandum in support of habeas petition and in reply to respondent's motion to dismiss filed in District Court.

September 28, 2001—Respondent's reply to the habeas corpus petition filed in District Court.

February 2, 2002—Report and Recommendation of Magistrate Judge recommending that petition for habeas corpus be granted.

February 22, 2002—Respondent's objections to Magistrate Judge's Report and Recommendation filed in District Court.

March 8, 2002—Petitioner's response to Magistrate Judge's Report and Recommendation filed in District Court.

March 31, 2002—District Court's Memorandum, Opinion, and Order granting habeas corpus petition.

April 3, 2002—Petitioner's motion to amend habeas petition and accompanying memorandum filed in District Court.



April 17, 2002—Respondent's memorandum in opposition to petitioner's motion to amend habeas petition filed in District Court.

April 29, 2002—Petitioner's reply memorandum in support of motion to amend habeas petition filed in District Court.

May 17, 2002—Respondent's Notice of Appeal to Eighth Circuit from District Court's March 31, 2002 Order and Opinion filed in District Court.

May 22, 2002—Magistrate Judge's Order granting motion to amend petition for habeas corpus.

May 22, 2002—Amended petition for habeas corpus filed in District Court.

May 23, 2002—Petitioner/Appellee's motion to dismiss appeal for lack of jurisdiction filed in Eighth Circuit.

May 31, 2002—Respondent/Appellant's opposition to petitioner's motion to dismiss appeal filed in Eighth Circuit.

June 6, 2002—Eighth Circuit Judge Order denying petitioner's motion to dismiss appeal.

July 12, 2002—Joint Appendix and Exhibit Volume filed in Eighth Circuit.

July 12, 2002—Respondent/Appellant's brief (with addendum) filed in Eighth Circuit.

August 1, 2002—District Court Order affirming Magistrate Judge's grant of petitioner's motion to file amended habeas petition.

August 13, 2002—Petitioner/Appellee's brief filed in Eighth Circuit.

August 26, 2002—Respondent/Appellant's reply brief filed in Eighth Circuit.

February 12, 2003—Case argued and submitted to Eighth Circuit.

May 27, 2003—Eighth Circuit Panel Judgment and Opinion.

June 4, 2003—Petitioner/Appellee's petition for rehearing and rehearing en banc filed in Eighth Circuit.

June 4, 2003—Report and Recommendation of Magistrate Judge that petitioner's amended habeas petition be denied and the action dismissed.

June 24, 2003—Petitioner's objections to the Report and Recommendation of the Magistrate Judge filed in District Court.

July 14, 2003—Respondent/Appellant's response to petition for rehearing and rehearing en banc filed in Eighth Circuit.

July 21, 2003—Respondent's reply to petitioner's objections to the Report and Recommendation of Magistrate Judge filed in District Court.

August 18, 2003—Certified copy of Eighth Circuit opinion and judgment received by District Court.

August 20, 2003—Petitioner/Appellee's motion to recall mandate and stay mandate pending filing of petition for certiorari filed in Eighth Circuit.

August 28, 2003—Eighth Circuit Judge Order denying motion to recall mandate and stay mandate.

October 24, 2003—District Court Memorandum, Opinion, and Order granting petitioner's application for writ of habeas corpus and ordering respondent to release petitioner under supervision.

October 24, 2003—Notice by respondent of intent to remove petitioner filed in District Court.



October 26, 2003—Petitioner/Appellee's renewed motion to recall mandate and stay mandate pending filing of petition for certiorari filed in Eighth Circuit.

October 26, 2003—Motion by petitioner in District Court to stay removal pending Eighth Circuit review of petitioner's renewed motion to recall the mandate.

October 26, 2003—District Court Order granting motion to stay removal pending renewed motion to recall the mandate in Eighth Circuit.

October 27, 2003—Respondent/Appellant's opposition to renewed motion to recall mandate and stay mandate pending filing of petition for certiorari filed in Eighth Circuit.

October 27, 2003—Petitioner/Appellee's reply in support of renewed motion to recall mandate and stay mandate filed in Eighth Circuit.

November 10, 2003—Eighth Circuit Judge Order granting motion to recall mandating and to stay mandate until disposition of petition for certiorari.

November 12, 2003—Notice of filing petition for writ of certiorari in United States Supreme Court received by Eighth Circuit.

November 17, 2003—Notice of filing petition for certiorari filed in District Court.

January 12, 2004—District Court Memorandum, Opinion, and Order directing respondent to release petitioner under supervision by January 19, 2004.

January 15, 2004—Respondent's Notice of Appeal to Eighth Circuit from District Court's January 12, 2004 Order filed in District Court.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
7850 Metro Parkway, Suite 320
Bloomington, MN 55425

Case A 71-689-585

In the Matter of Keyse Guled Jama

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on August 31, 2000. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decisions will become the official opinion in this case.

[ ] The respondent was ordered removed from the United States to _____.

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to _____ alternative to _____.

[ ] Respondent's application for voluntary departure was granted until _____ upon posting a bond in the amount of $_____ with an alternative order of removal to _____.

[ **X** ] Respondent's application for asylum was ( ) granted (x) denied ( ) withdrawn.

[ **X** ] Respondent's application for withholding of removal was ( ) granted (x) denied ( ) withdrawn.

[ **X** ] Respondent's application for ~~withholding~~/deferral or removal under Article III of the Convention Against Torture is ( ) granted (x) denied ( ) withdrawn or ( ) other.

[ ] Respondent's application for cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for cancellation of removal under section 240A was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ **X** ] Respondent's application for a waiver under section 209(c) of the INA was ( ) granted (x) denied ( ) withdrawn or ( ) other.

[ **X** ] Respondent's application for adjustment of status under Section 245 of the INA was ( ) granted (x) denied ( ) withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to post a $_____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other:_____.



Date: 8/31/2000

Appeal: (**X**) Applicant ( ) INS ( ) Both ( ) Waived

Appeal Due by: October 2, 2000

/s/ Joseph R. Dierkes
U.S. Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Bloomington, Minnesota

File No.: A 71 689 585

August 31, 2000

In the Matter of

KEYSE GULED JAMA,
Respondent

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(2)(A)(i)(I) of the Immigration Act, in that you are an alien who has been convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude, or an attempt or conspiracy to commit such a crime.

APPLICATION: 1) Section 209 of the Immigration Act—adjustment of status, including an application for a waiver under Section 209(c) of the Immigration Act;
2) Section 241(b)(3) of the Immigration and Nationality Act—withholding of removal;
3) Relief under Article 3 of the Convention Against Torture.

ON BEHALF OF RESPONDENT:



John Keller, Attorney at Law

ON BEHALF OF SERVICE:

Daniel Pornschloegl, Assistant District Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

1. INTRODUCTION AND PROCEDURAL SUMMARY

Respondent is a 21-year old single male, who is a native and citizen of Somalia, who entered the United States on or about February 27, 1996, as a refugee.

Removal proceedings were commenced on November 16, 1999 by the filing with the Immigration Court of a Notice to Appear, which is marked Exhibit 1. Respondent was charged with being subject to removal as an alien who had been convicted of a crime involving moral turpitude.

At a prior master calendar hearing held on June 5, 2000 at the prison at Stillwater, Minnesota, the respondent, through associate counsel, admitted the allegations in the Notice to Appear, and conceded the charge of removability. The Court would note that a subsequent pleading in this case involved a denial of allegation 4, while the charge remained conceded.

Based on the respondent's admissions, and based on the conviction documents in the record, the Court finds that removabilty has been established by evidence which is clear, convincing, and unequivocal. The respondent declined to designate a country for removal. The Court has designated Somalia. The respondent is an arriving alien having been effectively given a conditional entry into the United States as a refugee.

Regarding relief from removal, the respondent has filed two principal applications. He filed an application for withholding of removal and relief under the Torture Convention. The respondent is not eligible to seek asylum, as his conviction for 3rd degree assault for which he received

a sentence of one year and one day is an aggravated felony under Section 101(a)(43)(F) of the Act, namely a crime of violence for which the sentence imposed was one year or more.

The respondent has also filed an application for adjustment of status under Section 209 of the Immigration Act, accompanied by a waiver under Section 209(c) of the Act (Form I-602). Those applications were originally filed with the Immigration Service, and they were denied. The record of proceeding on those applications before the Service is included in Exhibit 8. The Court is treating those applications as a renewal before the Court. See 8 C.F.R. Section 209.2(b).

The respondent testified in support of his application, as did his uncle. Both sides offered additional documents.

## 2. GENERAL SUMMARY OF REFUGEE ADJUSTMENT, WITHHOLDING OF REMOVAL, AND TORTURE CONVENTION LAW

Aliens who are admitted to the United States as refugees are eligible to seek adjustment of status under Section 209 of the Immigration Act. For those aliens who are inadmissible to the United States pursuant to Section 212(a)(2) of the Act, they may seek a waiver of their inadmissibility under Section 209(c) of the Act, for reasons of humanitarian purposes, to assure family unity, or when it is otherwise in the public interests.

In applications for withholding of removal under Section 241(b)(3) of the Immigration Act, the respondent bears the evidentiary burdens of both proof and persuasion. To be eligible for withholding of removal, an alien must show a "clear probability" of persecution in the country designated for removal on account of race, religion, nationality, membership in a particular social group, or political opinion. This means that the respondent must establish that it is more



likely than not that he would be subject to persecution for one of the grounds specified.

For applications filed on or after April 1, 1997, the applicant shall also be considered for eligibility for withholding of removal under the Convention Against Torture if the applicant requests such consideration, or if the evidence presented by the alien indicates that the alien may be tortured in the country of removal. See 8 C.F.R. 208.13(c) (1). Eligibility for withholding of removal under the Convention Against Torture is set forth at 8 C.F.R. 208.16(c). The burden of proof is on the applicant to establish that it is "more likely than not" that he would be tortured if removed to the proposed country of removal.

"Torture" is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, for intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." See 8 C.F.R. Section 208.18(a). Torture is an extreme form of cruel and inhuman treatment, and does not include pain or suffering arising from lawful sanctions. The act must be directed against a person in the offender's custody or physical control.

In assessing whether it is more likely or not that an application [sic] would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to: evidence of past torture inflicted upon the applicant; evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured; evidence

of gross, flagrant, or mass violations of human rights within the country of removal, where applicable; and other relevant conditions in that country of removal. See 8 C.F.R. Section 208.16(c).

3. THE EVIDENCE PRESENTED

The respondent was the first witness to testify. He states that he was born on January 1, 1979 in Somalia. He arrived in the United States on February 27, 1996, as a refugee, and has never changed that status. He was born in Mogadishu. His mother is deceased, and his father is still living, residing here in the Twin Cities. The respondent has no children of his own, and never was married. Extensive testimony was taken regarding the respondent's criminal history. When first questioned about the number of times he was arrested in the United States, he stated that it was about five times, but he was not sure. His 1999 arrest in Wasika was covered. The respondent states that he was in his room, drinking alcohol at the time. He looked out the window and saw a friend of his getting beaten up outside by a number of other people. The respondent states that his friend was a member of Somali clan, the Darod. The individuals beating up his friend were members of the Hawiye clan. The respondent states that he went outside to break up the fight. His fellow Darod clan member ran away, and when police arrived on the scene, they arrested all the people remaining there, including the respondent.

Respondent states that in the course of the criminal proceedings relating to this arrest, his attorney encouraged him to plead guilty. The respondent states that he did not have a weapon at the time of the incident. He states also that he did not hurt anyone. Respondent claims that the other Darod clan member was the person who injured the attackers. The respondent states that no weapon was found on him. The respondent also states that his criminal lawyer told him that the Immigration Service would not come after him if he



plead guilty to the offense. The respondent ultimately identified the name of the other Darod clan member, the person who did the stabbing, as Abshir Mohamud. Respondent states that he told the police officers investigating the incident that Abshir Mohamud was the one committing the crime. The respondent testified regarding other criminal arrests in the United States. There was a 1997 arrest in Hennepin County that lead to a prior guilty plea on a theft charge. The guilty plea was set aside, and the respondent ultimately took the case to a jury trial. He was acquitted in the trial. The respondent states that he also had two or three drinking arrests. He states that his only arrest for fighting was on the assault charge in Wasika. The respondent initially denied DWI charges relative to his drinking. In fact, he did state that all of his criminal problems were always from his drinking in the United States. He has never had any alcohol treatment in this country, but states that he would now plan to get that treatment.

There were inquiries of the respondent on direct examination regarding discipline problems in prison. The respondent definitely attempted to minimize the seriousness of these discipline incidents. He states that they essentially arose from his being mistreated in prison, including allegations of racist treatment by guards. The respondent states that he was subject to a number of beatings during the course of his imprisonment. Ultimately, his prison sentence was extended to the point where he had to serve the entirety of that sentence.

Since the respondent has been at the jail in Rush City, approximately two months, he has not had discipline problems there. He states that he is attending classes at Rush City. The respondent held a number of jobs in the United States, including with a printer, with LSG Sky Chefs, and for a number of temporary services. None of these jobs were held for extended periods of time. Respondent states that he

had to change jobs because of his arrests related to the alcohol related incidents.

The respondent states that his immediate family is in Minnesota. His father, stepmother, and his brothers and sisters all live in Eden Prairie, a suburb of the Twin Cities. The respondent's biological mother died when he was young. The respondent states that he has had a lot of problems with his stepmother. He described her as the person who taught him to drink. He says that she put him out of the family home. After being removed from the family home, he went to live with his uncle, Mohamud Musee Jama. This is in a house owned by the respondent's aunt, the sister of Mohamud Musee Jama. The respondent stated that he lived with his uncle for about eight months to one year.

The respondent was questioned regarding who from his family would be present in court. His uncle did appear and testify. Respondent stated that he thought his father would be there. Ultimately, no other family members appeared. The respondent states that he had received a letter from his brother Abdi, but he had left that letter in the jail. The respondent states that if he were to be released from custody, he would go to live with his brother, Abdi.

The respondent was 12 years old when he left Somalia. He has minimal recollections of that country, other than seeing dead bodies, and damage to buildings in the course of leaving that country. The respondent is a member of the Darod clan, Dholbohorite subclan. The respondent states that his family left Somalia because of clan related reasons. They traveled to a refugee camp where they remained for an extended period of time. The family had lived in a house in Mogadishu. Respondent states that he has no family members to return to in Somalia at this time.

On cross-examination, the Immigration Service attorney brought out a number of other arrests relating to the respondent. The Service attorney produced a printout from



the Hennepin County courts listing 12 arrests for the respondent in Hennepin County alone. Service counsel went through the arrests more or less individually, and the respondent acknowledged some of the arrests, but could not remember others. He remembered a theft arrest in November 1997 in Bloomington. He also recalled an arrest for criminal damage to property. He could not recall two prior arrests in 1997 and 1998 for 5th degree assault. After being questioned regarding these arrests, the respondent ultimately stated that he had had many arrests in Hennepin County, and couldn't remember all of them.

Regarding the Wasika case that resulted in the 3rd degree assault conviction, the respondent again denied having assaulted or injuring anybody. It was pointed out to him on page 51 of Exhibit 2 that in the plea transcript he had admitted that he had injured one other person. The respondent now denies having injured anyone, and states that he simply said that to the trial judge to get released from custody. He states that he also blames his probation officer in that proceeding for problems that resulted in his being sentenced to one year and one day.

The respondent was questioned further regarding other incidents leading to arrests in Wasika. He believes that he has four arrests in Wasika, the 3rd degree assault, and three for underage drinking. He also acknowledged that there was an April 25, 1999 DWI arrest in Wasika.

The respondent states that after coming to the United States in early 1996, his father moved out of the family home in about August of 1996. The respondent last saw his father in February of '99, and last talked with him on the phone about two months ago. He last saw any of his siblings in January of 1999. One of the siblings apparently sent him money while respondent was in prison. The respondent's uncle was the only person who visited him during his time in prison.

There was testimony regarding the discipline problems set out for the respondent while incarcerated. He denies having assaulted or threatened any guards. He states that he would initially have been eligible for release from prison on February 20, 2000. Because of his disciplinary problems, he had to serve his complete sentence, and was not released until June 22nd. He denies having tried to elbow one of the guards. Ultimately, the respondent denies all of the disciplinary charges brought against him.

In response to questions from the Court, the respondent states that he really has no explanation for why he has so many arrests and criminal charges in the approximately four years that he has been in the United States. Regarding the night of the assault incident in Wasika, he states that he had had seven beers to drink along with a large bottle of vodka. He has no real explanation for why he was blamed for the stabbings, when. they were in fact carried out by an entirely different person. He does state that the people who were stabbed blamed him because he was present. The Court asked the respondent if during his interviews by the police following the stabbing if he had identified the person who had actually done the stabbings, Mohamud Abshir. The respondent could not recall if he told the police about that.

The other witness to testify was Mohamud Jama Musee, the respondent's uncle. The respondent is the son of this witness' brother. The witness came to the United States in 1994 as a refugee, and now is a United States citizen. He works as a teacher at Roosevelt High School, and is involved in other Somali community activities.

The witness stated that the respondent had in fact had problems with the respondent's parents in the United States. The respondent wanted to get out of the family home because the respondent did not want to comply with the rules there. The respondent's family wanted him to stay, but he left



nonetheless. The respondent has resided with the witness and the witness' sister on two occasions in the United States.

The witness states that when the respondent's family was in Somalia, the respondent's father suffered an injury in Baidabo, when the father was shot in the arm. One relative had some connection to Siad Barre, and was also killed in the civil war. The witness was asked what he thought the respondent might encounter on returning to Somalia. He states that the respondent would face dangers in that country. He described the respondent as not being a person of "tolerance", and stated that he was concerned that the respondent could get involved with the wrong type of people in Somalia.

In response to questions from the Court, the witness stated that the traditional area of the Dholbohonte subclan of the Darod clan is near Lascanood, which is in the northern region of Somalia. The witness states that there has been some fighting in that region, but states that it is different than Niogadishu.

The Court will note the following from the Exhibits in this case: Exhibit 2 is a Service submission that includes a number of background documents on the respondent's criminal record. The respondent was interviewed on March 17, 1998 regarding his inspection for his admission as a refugee. The respondent describes the incident relating to what the Court interprets to be his prior conviction, now set aside, for the auto theft. The respondent states at page 2 of the Exhibit that it involved a tribal fight between Somalis. Ultimately, the respondent was charged with stealing a car. He states that he was told by his lawyer at that time that if he admitted he stole the car, he would be released. Respondent states that he really did not steal the car, as he was in effect driving it with the consent of the owner. He does acknowledge that there was a fight among some of the people who were at a club on that night.

Most of the balance of the exhibit relates to the respondent's 3rd degree assault conviction. The more complete copy of the complaint in this case is at Exhibit 12. This reflects that the incident took place at 4:07 in the morning on June 15, 1999. The police were called to the scene of the crime, and spoke with three Somali injuries who had suffered from stab wounds. One individual was stabbed in the back of his right shoulder. Another had been stabbed on his right hand and right bicep. The third person had been stabbed in the left forearm. The stabbing victims were transported by ambulance to a local hospital. The complaint reflects that all three of the victims identified the respondent as the person who had stabbed them. Returning to Exhibit 2, the initial disposition of the case is set out at page 6. The respondent plead to a charge of 3rd degree assault, and was given a suspended sentence of one year and one day. In fact, execution of this sentence was suspended. A requirement of the suspended sentence was that the respondent serve 180 days in jail, and he was placed on probation for up to three years. There were a number of conditions of the probation, including no use of alcohol. Further, the respondent was not to have any direct contact with the victim, victim's family, or a Faye Abraham. Included in the exhibit are both the plea and sentence transcript. The plea transcript begins at page 42, and took place on September 8, 1999. It is noted that there were some other cases pending against the respondent at the time, and they were disposed of at that time as well. As noted on page 46, the respondent also pleaded guilty to a charge of obstructing legal process, apparently related to some refusal to take a breathalyser. The respondent plead guilty to the 3rd degree assault charge as noted on page 47. At the bottom of page 48, it is noted the respondent acknowledged that no threats or promises were made to him to enter the guilty plea. On that page he states, "I believe that I am guilty." At the top of page 49, he states that no one forced him to plead. Starting at the bottom of page 49, the respondent states that he was involved in a fight on that day.



He denies having used a knife or having stabbed one of the victims. However, he does acknowledge that he committed an assault which inflicted substantial bodily harm on one of the victims. Starting at the bottom of page 52, the prosecutor notes that one of the victims was suffering from what appeared to be a stab wound. The respondent, at page 53, acknowledges that he injured the victim, but does not know what type of injury the victim suffered. The sentencing transcript begins at page 7. This sentencing took place on October 6, 1999. It is noted initially on page 8 of the exhibit that on September 15th, the respondent was picked up in Hennepin County and charged with disorderly conduct in an incident involving alcohol. It appears that the respondent was using alcohol during the period of time between his guilty plea and sentencing. It is noted on page 16 that on September 16th, the probation officer received a call from Human Services indicated that the respondent was in the Human Services offices, and he was intoxicated. At page 30 of the exhibit, the prosecutor notes for the court's information that a felony conviction for the respondent would put him at serious risk of deportation.

The court actually pronounced it's [sic] sentence beginning at the bottom of page 34. The respondent was committed to the Commissioner of Corrections for one year and one day. The sentence was suspended, subject to probation. The respondent was required to serve "county jail time of 180 days".

The Court would now note Exhibit 13, which reflects a November 1, 1999 probation violation hearing on the same case. The reason for the probation violation was that the respondent was found to be intoxicated on October 21, 1999, shortly after he was released after finishing his required county jail time. This was a violation of probation. The court found that the violation was intentional and not excusable. The trial judge noted that "it is obvious to this Court that you have no intention of following any

probationary terms regardless of the conditions that may be imposed on you * * * This Court is further of the opinion that to not revoke your probation would undermine the seriousness of the conviction for which you are appearing today." The court went on to execute the one year and one day sentence. Going back to page 6, the respondent stated that he did not want to go to prison or jail. He stated, "If you can put me on probation, that would be fine, otherwise, transfer me to the Immigration Court and let them take me to Somalia." At page 9 he again requests to be sent to the "Immigration jail". At page 11, it is noted that a restitution for the victims would involve a $771 ambulance bill and a $435 medical bill. The Court notes that it overlooked a statement at page 33 of Exhibit 2. This reflects that the prosecutor did contact the victim of the crime who states that he was "almost paralyzed on my hand". The victim states that he has lost a job as a result of the hand injury. The victim went on to tell the prosecutor that "Mr. Jama is going to kill someone some day, and he's (the victim) really concerned with his safety and others, and he said that there is almost $2,000 worth of hospital bills that are piling up." At page 31 of that exhibit, it was noted that the respondent had a thorough psychological evaluation and chemical dependency evaluation when he had been at the St. Peter, Minnesota facility.

Exhibit 4 is respondent's Form 1—589. This document essentially states that respondent's family left Mogadishu when he was 11 or 12, and he did not have a very good memory of what happened. He states that his family were Darod clan members, and that was the cause of their problems. He states that he would be attacked by opposing clans if he were returned to Somalia.

Exhibit 6 includes records of the Division of Human Services. There is a note under date of March 26, 1996 reflecting that the respondent was a single male applying for benefits. He had arrived in the United States February 27,



1996, and was currently living with a non-related roommate. At page 10 of that exhibit it was noted by December 13, 1996, the respondent was living in Memphis, Tennessee. He apparently returned to the Twin Cities within two months of going to Memphis.

Exhibit 7 is additional documentation submitted by the respondent. Included in the exhibit is the Amnesty International report for Somalia for the year 2000. This notes that there was continued fighting in Somalia, especially in the south of the country. Famine within parts of the country was already noted. It is further noted that Somaliland in the northwest of that country is enjoying relative stability and a functioning administration. Likewise, in the Puntland region of northeastern Somalia, some administrative structures were in place as well.

Starting at page 18 is a UNHCR update on conditions in Somalia dated September 1999. This notes that fighting between clan factions has continued in the southern and central parts of Somalia. It also notes that repatriation of Somali refugees from Ethiopia has continued in 1999. These refugees are being returned to the Somaliland region of the northwestern part of that country. Sixty thousand Somali refugees from Ethiopia have returned there since late 1997. At page 42 is the U.S. State Department Consular Report, on Somalia, specifically a travel warning. The State Department notes that interclan fighting continues in that country. However, the report notes that parts of the north of Somalia including the self-declared republic of Somaliland is relatively peaceful.

Exhibit 9 is documentation submitted by the respondent reflecting that his 1997 conviction on the auto theft charge was set aside, and he ultimately was acquitted by a jury. His acquittal was in June of 1998. The Court would note that back in Exhibit 2 is documentation showing that the conviction was set aside April 9, 1998, based on the

respondent not being properly advised of the Immigration consequences of the conviction. See pages 65 and 66 of Exhibit 2. The Court would note at page 4 of Exhibit 9 that on July 18, 1997 the respondent's conditional release on that charge was revoked because it is reported that he threatened the victim. A bench warrant was issued for him at that time.

Exhibit 10 is the Service submission that lists the respondent's arrests and criminal cases in Hennepin County (Minneapolis), Minnesota. These reflect four assault arrests, and another arrest for simple robbery. The other arrests include disorderly conduct, trespassing, and criminal damage to property.

Exhibit 10 includes the respondent's disciplinary records from the Minnesota Correctional System. Simply put, these documents reflect the respondent engaging verbal abuse of prison employees, including serious threats directed against the prison employees. The respondent was subjected to numerous violation reports, which ultimately resulted in him losing all his good time in prison, and his being required to serve the entirety of his sentence. The respondent was transferred from lower security institutions up to the Oak Park Heights Prison, which is the highest security classification prison in the Minnesota system.

4. ANALYSIS

Removability is not in dispute in this case. Although the respondent did withdraw his admission of allegation 4 in the Notice to Appear, his conviction for the 3rd degree assault offense still provided a basis for him to concede removability. The only issues remaining for consideration by the Court relate to whether or not the respondent qualifies for any relief from removal.

The respondent is not eligible to seek asylum because he has been convicted of an aggravated felony relative to the assault 3rd degree charge. See Section 208(b)(2)(B)(i) of the



Immigration and Nationality Act. The remaining forms of relief sought by the respondent are adjustment of status under Section 209 of the Act with a waiver under Section 209(c), withholding of removal under Section 241(b)(3) of the Act, and relief under the Torture Convention.

The Court will initially comment on the credibility of the respondent. The respondent's testimony regarding his criminal record was rather vague. He grossly understated the number of arrests that he has had in the United States. The respondent stated that virtually all of his criminal related problems related to drinking. Considering that, the Court finds that his testimony regarding the specifics of the underlying circumstances of his criminal record is very questionable, at a minimum, affected by his intoxication during a number of these instances. The Court would also note that a recurring theme in the respondent's testimony is that he has never really done anything wrong. He has blamed the crimes for which he was charged on the actions of other people, including blaming the stabbings on the assault offense to an individual named Abshir Mohamud. However, the respondent can't recall if he ever mentioned to the police that a third party had committed the crimes. Further, the respondent plead guilty to that offense, and stated that he was not coerced into entering that plea. He now advises this Court that he lied to the criminal judge by admitting the commission of the crime simply to be released from custody.

Further, he blames a number of problems on lies carried out by probation officers, police officers, and prison guards. In effect, the respondent challenges the voracity of virtually everyone he has come to deal with in the criminal justice system, including the lawyers who previously represented him. When the record shows that a large number of people are accused of lying by one individual, that significantly calls into doubt the credibility of that one individual. The Court accordingly has serious doubts about the credibility of the respondent's testimony.

The Court will first discuss the respondent's application for adjustment of status under Section 209 of the Act, with the attendant waiver under Section 209(c). That section provides that certain criminal grounds of inadmissibility may be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. The Court would note that the record in this case discloses no public interest whatsoever in the respondent's continued presence in the United States. He has not identified any real contributions to the community of any kind that would justify such a waiver.

Regarding family unity, this is a most remarkable case. The respondent has numerous close family members in the United States, including father and siblings. None of them have appeared to testify on the respondent's behalf, nor have they submitted anything in writing to support his claim. The respondent blames this problem on a bad relationship with his stepmother. However, the testimony of respondent's uncle is that the respondent is the one who chose to leave the family home because he didn't wish to follow the rules there. What it comes down to in this case is that the respondent really has not established a basis for a family unity waiver here.

Regarding humanitarian purposes, the Court believes it is appropriate to balance the humanitarian factors in the case with the negative factors. An appropriate standard for considering such an application would be that generally set forth in the Board's decision in Matter of Mann, 16 I&N Dec. 581 (BIA 1978). The Court should balance the adverse factors evidencing the alien's undesirability as a permanent resident with the social and humane considerations presented on his behalf. What we are dealing with in the present case is a respondent who has not been in the United States for a very long period of time, who has been convicted of several offenses, including a very serious assaultive offense, which according to the complaint involves a knife. Obviously,



some serious injury was inflicted on the victims, as all of them were suffering from stab—type wounds and were treated at hospitals. While respondent denies that he used a knife, and for that matter denies ever hurting anyone, his admissions to the criminal court contradict that. What is apparent from the record in this case is that this respondent has a significant disregard for the laws of this country. He was given what this Court considers a very favorable treatment by the criminal court on the assault charge, including a grant of probation. The respondent immediately violated his probation conditions when released from custody, and then had the one year and one day sentence imposed upon him. The respondent has no substantial employment record, having switched jobs frequently based on his alcohol related arrest problems. As noted previously, his family ties are minimal, and there is absolutely no record of a rehabilitation. His extremely negative prison discipline record is part of the evidence in this case as well. Simply put, the respondent really has very minimal favorable factors going for him. The Court acknowledges the respondent was admitted to the United States as a refugee, but that in and of itself is not a basis to overcome all of the negative factors in this case. The Court believes in the exercise of discretion the respondent's application for a waiver under Section 209(c) of the Act should be denied based on his dreadful record over the short period of time that he's been in the United States. Because the waiver is denied, the application for adjustment of status would be denied as well.

Turning to the next form of relief sought by the respondent, we are dealing with withholding of removal under Section 241(b)(3) of the Act. That form of relief will not be available to an individual who has been convicted by a final judgment of a particularly serious crime. See Section 241(b)(3)(B)(ii) of the Immigration Act. The evidence in this case reflects that the respondent was convicted of assault in the 3rd degree. The complaint in this case reflects that three

individuals were stabbed during the incident. The leading Board case on this issue of whether or not a crime should be viewed as particularly serious is Matter of Frantescue, 18 I&N Dec. (BIA 1982). That case stands for the proposition that every crime should be considered on a case by case basis on making the assessment. In judging the seriousness of the crime, the Court should look to such factors as the nature of the conviction, the circumstances and underlying facts of the conviction, the type of sentence imposed, and most importantly, whether the type and circumstances of the crime indicate that the alien will be a danger to the community. Crimes against persons are more likely to be categorized as "particularly serious crimes".

In the present case, the crime to which the respondent plead guilty is an assaultive crime, clearly a crime involving danger to persons. Regarding the underlying circumstances of the crime, the complaint reflects that three individuals were stabbed. The type of sentence imposed originally by the court was a period of six months in the County jail, followed by three years probation. Because the respondent immediately violated his probation, the original sentence of one year and one day was executed. Because of the respondent's discipline record in prison, he was required to serve the entirety of that sentence.

Regarding the issue of whether the respondent would be a danger to the community, the Court feels that it is very important to note that the respondent had consumed a large amount of alcohol on the night of this offense. Specifically, he states that he drank seven beers and a large bottle of vodka. The respondent has stated that virtually all of his criminal problems in the United States arise from his consumption of alcohol. The respondent, upon being released from his County jail time after his sentencing by the trial court, immediately went back to consuming alcohol. The criminal court concluded that this respondent would not comply with the conditions of probation, specifically the



prohibition of drinking. Considering this respondent's history of drinking, then getting into assaultive situations, including one where individuals were stabbed, the Court can come to no other conclusion but that this respondent would be a danger to the community. Accordingly, the Court will find that the respondent has been convicted of a particularly serious crime, and is barred from the relief of withholding of removal.

The remaining form of relief would be deferral of removal under Article 3 of the Convention Against Torture. Because the respondent has been convicted of a particularly serious crime, he is not eligible for withholding of removal pursuant to Title 8 C.F.R. 208.16. The relief that remains available to him is that under 8 C.F.R. 208.17. The Court would consider that this discussion would also have some bearing on the application for withholding under Section 241(b)(3) of the Act should the respondent have not been barred from seeking that relief.

The Court acknowledges that membership in a clan in Somalia can provide the basis for a claim for membership in a particular social group to seek relief under the persecution laws. The leading Board decision is Matter of H-, 21 I&N Dec. 337 (BIA 1996). In the present case, we are dealing with a respondent who is a member of the Darod clan, but is a member of the Dholbahonte subclan. The essence of the Board's decision in Matter of H- related to the dangers that a Mareehaan subclan member of the Darod clan faced in Somalia after the outbreak of the civil war in 1991. It is clear that the background documentation on Somalia at that time reflected that the Mareehaan were a particular target of the Hawiye clan, or United Somali Congress in the period around the fall of the Siad Barre regime. The respondent in the present case fled Mogadishu with his family members, and has really not provided any evidence reflecting that he was personally subjected to what would amount to past

persecution. Simply put, his family fled before they were subjected to any specific mistreatment.

The Court would note that the Dholbahonte subclan has its home area of Somalia a significant distance away from Mogadishu, in the Lascanood region in the northern portion of that country.

The northern portion of Somalia is definitely a more stable and peaceful region of that country at this time. The Court has not found any documentation that would reflect that the Dholbahonte subclan is currently the target of mistreatment by any other specific clan groups in Somalia. The Court would note that one of the factors to be considered in assessing a Torture Convention claim is whether or not an applicant could relocate to a part of the country of removal where he or she is not likely to be tortured. The testimony of the respondent and his uncle reflect that they are members of the Dholbahonte subclan. The Dholbahonte are part of the Dared clan. The Darod's are one of the largest clan groups in Somalia, and could not realistically be described as a minority group, such as the Midgan, Brawan, or other recognized minority or caste groups in that country. The fact that the respondent would have available to him an area that appears to be under the control of his subclan is a significant factor in this case. The fact that there is also no definitive evidence showing that the Dholbahonte are a specific target of any groups in Somalia is likewise relevant.

A further concern that the Court has with the availability of Torture Convention relief to the respondent is the fact that there really is no central government operative in Somalia at this time. Some of the regions of northern Somalia are under the control of localized governmental organizations, none of which have been internationally recognized. There is no evidence in the record that any of these governmental groups in Northern Somalia would be inclined to torture this respondent. It is a significant burden of proof on the



respondent to establish that it is more likely than not that he would be subject to torture. The Court cannot find based on the evidence in this case that respondent has established that he would be tortured by any governmental group or by a person acting in any official capacity. The respondent simply has not met his burden of proof to establish eligibility for relief under the Torture Convention. That application will be denied.

There is no other relief available to the respondent. The following orders will be entered in this case:

1) The respondent is found to be removable from the United States as charged in the Notice to Appear.

2) The respondent's application for a waiver of inadmissibility under Section 209(c) of the Act is denied.

3) The respondent's application for adjustment of status under Section 209 of the Act is denied.

4) The respondent's application for withholding of removal is denied, based on the respondent having been convicted of a particularly serious crime.

5) The respondent's application for relief under the Convention Against Torture is denied.

6) The respondent is ordered removed from the United States to Somalia.

JOSEPH R. DIERKES
Immigration Judge

U.S. Department Of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A71 689 585 – Bloomington Date: May 9, 2001

In re: KEYSE, GULED JAMA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro Se

ON BEHALF OF SERVICE: Daniel J. Pornschloegl
Assistant District Counsel

CHARGE:

Notice: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] – Crime involving moral turpitude

APPLICATION: Withholding of removal; Protection under the Convention Against Torture; Adjustment of status; Waiver pursuant to section 209(c) of the Immigration and Nationality Act

ORDER:

PER CURIAM. The appeal is dismissed. We grant the respondent's appeal fee waiver request and consider this appeal without payment of fee. *See* 8 C.F.R. § 3.8(c).



We have reviewed the record of proceedings, the Immigration Judge's decision of August 31, 2000, and the contentions on appeal. We find that the Immigration Judge's decision accurately sets forth the facts asserted by the respondent in support of his claims and correctly concludes that the respondent has failed to demonstrate that he merits the requested relief. We also find that the Immigration Judge adequately and correctly addressed the issues raised on appeal. The claims on appeal are without merit. The Immigration Judge's decision is therefore affirmed for the reasons set forth in that decision.

/s/ Edward R. Grant
FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE
Executive Office For Immigration Review

Board of Immigration Appeals
Office of the Clerk

5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

*S-JAMA, KEYSE GULED
INMATE #: 203857 A71 689 585
INMATE HOUSING: MSA
1145 Shenandoah Lane
Plymouth, MN 55447-0000

Office of the District Counsel/SP
P.O. Box 11898
St. Paul, MN 55111-0898

Name: *S-JAMA, KEYSE GULED

A71-689-585

Date of this notice:
05/09/2001

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Very truly yours,

/s/

Lori Scialabba
Acting Chairman

Enclosure

Panel Members:
COLE, PATRICIA A.



GRANT, EDWARD R.
THOMAS, ELLEN K.

ENTERED MAY 16, 2001

U.S. Department of Justice
Immigration and Naturalization Service

Warrant of Removal/Deportation

File No.: A71 689 585

Date: May 25, 2001

To any officer of the United States Immigration and Naturalization Service:

Keyse Guled JAMA
(full name of alien)

who entered the United States at or near New York, New York (place of entry) on or about 2/27/1996 (date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

☒ an immigration judge in exclusion, deportation, or removal proceedings
☐ a district director or a district director's designated official
☒ the Board of Immigration Appeals
☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

Section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or her direction, command you to take into custody and remove from the



United States the above-named alien, pursuant to law at the expense of:

THE APPROPRIATION, "SALARIES AND EXPENSES, U.S. IMMIGRATION AND NATURALIZATION SERVICE, 2001," INCLUDING THE EXPENSES OF AN ATTENDANT, IF NECESSARY.

/s/ Dean Hove
(signature of INS official)

Deputy District Director
(Title of INS official)

May 25, 2001
Bloomington, MN
(date and office location)

U.S. Department of Justice
Immigration and Naturalization Service

Warning to Alien Ordered Removed or Deported

File No.: A71 689 585
Date: May 25, 2001

Alien's full name: Keyse Guled JAMA

In accordance with the provisions of section 212(a)(9) of the Immigration and Nationality Act (Act), you are prohibited from entering, attempting to enter, or being in the United States:

☐ For a period of 5 years from the date of your departure from the United States because you have been found deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated upon your arrival in the United States as a returning lawful permanent resident.

☐ For a period of 10 years from the date of your departure from the United States because you have been found:

☐ deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.

☐ inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act initiated as a result of your having



been present in the United States without admission or parole.

☐ deportable under section 241 of the Act and ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.

☐ deportable under section 237 of the Act and ordered removed from the United States in accordance with section 238 of the Act, by an immigration officer, a judge of a United States district court, or a magistrate of a United States magistrate court.

☐ For a period of 20 years from the date of your departure from the United States because, after having been previously excluded, deported, or removed from the United States, you have been found:

☐ inadmissible under section 212 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.

☐ deportable under section 237 of the Act and ordered removed from the United States by an immigration judge in proceedings under section 240 of the Act.

☐ deportable under section 237 of the Act and ordered removed from the United States in proceedings under section 238 of the Act.

☐ deportable under section 241 of the Act and ordered deported from the United States by an

immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act.

☐ to have reentered the United States illegally and have had the prior order reinstated under section 241(a)(5) of the Act.

☒ At any time because you have been found inadmissible or excludable under section 212 of the Act, or deportable under section 241 or 237 of the Act, and ordered deported or removed from the United States, and you have been convicted of a crime designated as an aggravated felony.

After your removal has been effected you must request and obtain permission from the Attorney General to reapply for admission to the United States during the period indicated. You must obtain such permission before commencing your travel to the United States. Application forms for requesting permission to reapply for admission may be obtained by contacting any United States Consulate or office of the United States Immigration and Naturalization Service. Refer to the above file number when requesting forms or information.

WARNING: Title 8 United States Code, Section 1326 provides that it is a crime for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States during the period in which he or she is barred from so doing without the Attorney General's consent. Any alien who violates this section of the law is subject to prosecution for a felony. Depending on the circumstances of the removal, conviction could result in a sentence of imprisonment for a period of from 2 to 20 years and/or a fine of up to $250,000.



| _____ | Deportation Officer | St. Paul District Office |
|---|---|---|
| (Signature of officer serving warning) | (Title of officer) | (Location of INS office) |

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

KEYSE G. JAMA,
Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

Civil No. 01-11720 JRT/AJB

DECLARATION OF DETENTION
ENFORCEMENT OFFICER ERIC O'DENIUS

I, Eric O'Denius, a Detention Enforcement Officer from the Office of Detention and Deportation in the St. Paul District of the United States Immigration and Naturalization Service ("INS"), hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge, information and belief:

1. In performing my duties as a detention enforcement officer, I am assigned the primary responsibility of organizing and scheduling all alien removals originating from the St. Paul District Office. In that capacity, I regularly make flight arrangements and oversee the acquisition of all Department of Justice, Department of State, and foreign clearances.

2. I have been involved in making final arrangements for the removal of 14 Somali nationals originating from the St. Paul District Office. (See Attachment). The selection of the destination city within Somalia is largely left to the alien's discretion. A Somali national may select from the cities of Bossaso, Berbera, Hargeysa, or Mogadishu for their removal. The fare from Minnesota to any of these cities is about the



same, which is paid for at Government expense. Of the 14 Somali nationals removed from the St. Paul District Office since 1999, all were removed to the city of their choice: one (1) to Mogadishu (via Berbera); three (3) to Berbera; and the remaining ten (10) to Hargeysa.

3. Sample schedules for removal to Bossaso, Berbera, Hargeysa, or Mogadishu, Somalia are as follows:

For Berbera, Bossaso, Hergeysa, or Mogadishu:
- Sat 1630 Depart Chicago (alien & INS)
- Sun 0830 Arrive Stockholm (alien & INS)
- Sun 1050 Depart Stockholm (alien & INS)
- Sun 2030 Arrive Dubai (alien & INS)
- Mon 0400 Depart Dubai (alien)
- Mon 0600 Arrive Berbera (alien)
- Mon 0700 Connecting flights depart (alien)
- Mon 1000 Last connecting flight arrives (alien)

For Mogadishu: (no stop in Berbera):

- Thu 2100 Depart New York (alien & INS)
- Fri 1530 Arrive Jeddah (alien & INS)
- Fri 2350 Leave Jeddah (alien & INS)
- Sat 0340 Arrive Nairobi (alien & INS)
- Sat 0700 Leave Nairobi (alien)
- Sat 0900 Arrive Mogadishu (alien)

4. When preparing for the removal of a Somali national, the INS issues the alien a Form I-269, Certificate of Identity. (See Attachment). This document is issued for aliens of any nationality where a national passport or other form of travel document cannot be obtained for travel. Form I-269 is also used by INS Inspectors when an alien is to be removed or excluded at airline carrier expense and the alien has no documentation of his own. All of the foreign governments whose territories are listed as transit sites in the previously discussed sample schedules for removal to Bossaso, Berbera,

Hargeysa, or Mogadishu, Somalia, have accepted these documents as valid, with our guarantee of onward travel.

5. After a Somali national is notified of the INS intent to execute a warrant of removal to Somalia, and after the alien selects a destination city, flight arrangements are made accordingly. When a travel itinerary has been drafted, the INS then issues a Request for Country Clearance through INS Headquarters, International Affairs Office. This Request for Country Clearance is issued to the Secretary of State – Office of Diplomatic Security, all U.S. Embassies which would be involved in the proposed removal (including those in any countries through which the alien will transit), and INS Headquarters – Detention and Deportation Section. Attached is a copy of a Request for Country Clearance issued in connection to an unrelated Somali National who was removed to Somalia in March of 2001 as well as a detailed explanation of abbreviations and acronyms used. (See Attached).

6. Removal of an alien is not actually commenced until the St. Paul District Office receives country clearance approval through the Department of State. Upon receipt of the Request for Country Clearance, the State Department prepares a cable that is sent to U.S. Embassies in all countries through which the alien and INS officers will transit. All U.S. Embassies must approve. Attached is an example of a country clearance approval issued in connection to the case of an unrelated Nigerian National. (See Attachment).

7. At the time of removal, INS officers carry U.S. passports and any visas required for transit. All country clearance cables and Form I-269 Certificate of Identity are presented on behalf of the alien. A minimum of 2 officers are required for all overseas escorts. At least one officer must be the same gender as the alien. If more than two aliens depart, a third officer must be present.



8. Of the 14 Somali nationals removed from the St. Paul District Office since 1999, the local government has accepted every Somali national we have sent back. The State Department, the INS Office of International Affairs, and Headquarters/INS, any of whom may veto a proposed removal, have not denied our requests for removal of Somali Nationals.

17 July 2001
Date

/s/ INS DED #1491
ERIC O'DENIUS
Detention Enforcement Officer
U.S. Immigration and Naturalization Service
Office of Detention and Deportation
2901 Metro Drive, Room 100
Bloomington, MN 55425

| DATE OUT | A-NUMBER | NOTES |
|---|---|---|
| 8/28/99 | A74 621 108 | |
| 8/28/99 | A75 592 879 | |
| 9/25/99 | A76 802 710 | |
| 12/18/99 | A74 674 014 | FEMALE |
| 12/18/99 | A40 446 831 | |
| 3/18/00 | A70 397 177 | |
| 3/18/00 | A75 328 133 | |
| 4/8/00 | A70 376 614 | |
| 4/29/00 | A74 816 136 | |
| 4/29/00 | A70 377 302 | |
| 7/29/00 | A70 366 834 | |
| 7/29/00 | A75 016 797 | |
| 1/14/01 | A70 396 123 | DENVER ASSIST |
| 3/10/01 | A70 367 180 | |



UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

File No.: A
Date: April 9, 1998

CERTIFICATE OF IDENTITY

To facilitate transportation to
All applicant whose photograph appears below.

NAME:

DATE & PLACE OF BIRTH:

NATIONALITY: SEX:

OCCUPATION OR
PROFESSION:

MARITAL STATUS:

PRESENT ADDRESS:

PURPOSE OF JOURNEY: For travel to _____
A national passport or any form of travel document cannot be obtained for travel to that country.

PERSONAL DESCRIPTION

Height:

Weight:

Attach Photograph

Color of hair:

Color of eyes:

Identification marks:

For the U.S. Immigration and Naturalization Service



1.> REFERENCE: 01-0221-1248-ID: 910/RIT-NBO

FROM: JINS/HQIAO >2.

TO: AMEMBASSY MOGADISHU >3.
USINS/OIC NAIROBI
USINS/DD ROME

INFO: SEC STATE WASHDC/ROBHC
0624/CA/OSC/CCS/AF ROOM 4811HQ >4.
JINS/DDP WASHINGTON, DC

UNCLASS

SUBJECT: REQUEST FOR COUNTRY CLEARANCE

1. INS REQUESTS COUNTRY CLEARANCE FOR AN ESCORT DETAIL TO BERBERA, SOMALIA.

A. THE INS POINT OF CONTACT FOR THIS REMOVAL IS ERIC ODENIUS EXT 270; INS ST. PAUL; TEL#: 612-313-9060; FAX#: 612-313-9064. ADDITIONAL CONTACT IS BOB SHANNON; TEL#: 202-616-7800; FAX#: 202-514-0122.

B. ALIEN NAME/(SEX)/A#:----------/
(MALE)/A70 367 180.
ALIEN DPOB/TVL DOC: 10/1/1965;
SOMALIA/US CERT. D/IDENTITE A70367180 >5.

DEPORT GROUNDS (D/P CONVICTION): ---------
---
6. > ---

C. ESCORTING AGENTS: (NAME; TITLE; PASSPORT #; EXPIRY DATE)

LYLE BRABAZON; DETENTION; 801114809; 3/24/2003

PATRICK KENNEY; DETENTION; 801008415; 1/8/2002

D. TRAVEL ITINERARY: (AIRLINE, #; DEP CITY, DDATE (MDY), DTIME; ARR CITY, ADATE (MDY), ATIME)

AA-AMER, 80; ORD-CHICAGO, 3/10/2001, 4:55:00 PM; ARN-STOCKHOLM, 3/11/2001, 8:25:00 AM.

EK-EMIRATES, 6152; ARN, 3/11/2001, 10:50:00 AM; DXB-DUBAI, 3/11/2001, 8:15:00 PM. <7.

ESCORTS WITNESS DEPARTURE OF ALIEN FROM DUBAI ON NON-STOP FLIGHT AS FOLLOWS: <8.

D3-DAALLO, 189; DXB, 3/12/2001, 4:00:00 AM; BBO-BERBERA, 3/12/2001, 3:10:00 PM.

ESCORTS DEPART AS FOLLOWS: <9.

KL/KLM, 428; DXB, 3/14/2001, 9:30:00 AM; AMS-AMSTERDAM, 3/14/2001, 2:00:00 PM.

KL/KLM, 6055; AMS, 3/14/2001, 4:35:00 PM; MSP-MPLS/ST PAUL, 3/14/2001, 6:35:00 PM.

E. ESCORT DEPARTURE INFO: ESCORTS TO DEPART AS INDICATED ABOVE. UAE TRANSIT VISAS APPLIED FOR. SWEDISH TRANSIT PERMISSION ALSO APPLIED FOR. NOTE: THIS IS A RESCHEDULE OF PREVIOUS CLEARANCE. MECHANICAL DIFFICULTIES



ON FLIGHT 80 FROM CHICAGO PREVENTED COMPLETION OF DETAIL on 03/03/2001. <10.

2. NO EMBASSY ASSISTANCE REQUIRED. <11.

3. COUNTRY CLEARANCE IS REQUESTED FOR THE INS ESCORTS. THE ABOVE INFORMATION IS PROVIDED TO POST FOR APPROPRIATE LOCAL NOTIFICATIONS. FAX NOTICE OF THIS COUNTRY CLEARANCE TO INS CONTACT SHOWN ABOVE. SHOULD POST HAVE ANY QUESTION PERTAINING TO THE REMOVAL, PLEASE CONTACT INS POC DIRECTLY. RSO ASSISTANCE IS GREATLY APPRECIATED. <12.

_____

DIRECTOR, HQIAO

## EXPLANATION OF COUNTRY CLEARANCE DOCUMENT

DRAFT

1. REFERENCE: A unique locator number with the overseas offices listed. RIT is for Rome District and NBO is the Nairobi sub-office.

2. FROM: INS, Headquarters, International Affairs Office.

3. TO: All Embassies involved. The US Embassy in Mogadishu is temporarily closed, so the nearest embassy – Nairobi – makes the arrangements.

4. INFO: Secretary of State, Diplomatic Security. Also, Headquarters DDP.

5. ALIEN DPOB/TVL DOC: With few exceptions, all international travelers must have a document verifying identity.

6. DEPORT GROUNDS: A courtesy to the receiving country.

7. ITINERARY: The airlines code deportees in the following manner:

DEPA: Escorted Deportee
DEPU: Unescorted Deportee
INAD: Inadmissible Alien (Carrier Responsibility)

Some airlines charge extra for DEPU aliens, because the carrier becomes responsible for ensuring that the alien arrives at his ultimate destination. The IATA (International Air



Transport Association) has developed uniform rules which cover the transport of deportees. It is the responsibility of INS to notify carriers that they will be booked deportees. The carrier knows the entry requirements for the countries they fly to as well and will not accept persons without approval from the receiving and transit countries.

8. WITNESS DEPARTURE: If the officers cannot go to the country of ultimate destination, they must witness the departure of the alien on a non-stop flight to the receiving country.

9. RETURN FLIGHT: As you can see, the officers are in Dubai long enough to be notified in case the alien is bounced back.

10. OTHER INFO: This is to let all parties know that we have carried out our responsibilities. These include: 1) US citizens must have a visa to enter the UAE. 2) Somali citizens must have an airside transit visa or consular approval to transit Sweden.

11. ASSISTANCE: Medical, psychiatric, afflicted, insane, or dangerous aliens. Also includes aliens where there might be media interest.

12. RSO: Regional Security Officer: attached to every US embassy or consulate worldwide.

| | |
|---|---|
| FILE NAME: | COUNTRY CLEARANCE GRAFF AND KENNEY |
| DRAFTED BY: | LFE |
| CLEARED BY: | CPJ |
| APPROVED BY: | CDW |
| CLASSIFICATION: | UNCLASSIFIED |
| PRECEDENCE: | P |

ACTION
ADDRESSEES: SECSTATE WASHDC

INFO: AMEMBASSY THE HAGUE
AMEMBASSY ROME
AMCONSUL FRANKFURT
AMEMBASSY ABUJA
AMCONSUL LAGOS

CAPTION LINE: ROME FOR INS
FRANKFURT FOR INS

TAGS: ASEC, CVIS, AMGT, CMGT

SUBJECT: COUNTRY CLEARANCE (GRAFF AND KENNEY)

REF: STATE 065084

1. Post welcomes the visit of Tim Graff and Patrick Kenney on April 09 and 10, pursuant to the deportation of alien ----------.

2. Notice of the deportation has been provided to the Amsterdam Schiphol Airport office of the Dutch Royal Border Police (Marechausee) (fax 31-20-603-8690).

3. Post Fraud Prevention Manager Chris Jester (tel 31-20-575-5336, fax 31-20-575-5310) is available should any assistance be required with this visit.



UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

KEYSE G. JAMA,
Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

Civil No. 01-1172 JRT/AJB

DECLARATION OF SCOTT BANIECKE ASSISTANT DISTRICT DIRECTOR FOR DETENTION, DEPORTATION, AND PAROLE

I, Scott Baniecke, Assistant District Director for the Office of Detention and Deportation in the St. Paul District of the United States Immigration and Naturalization Service ("INS"), hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge, information and belief:

1. In performing my duties as Assistant District Director – Detention, Deportation, and Parole, I am responsible for overseeing the detention and removal of aliens in the St. Paul District Office. In that capacity, I regularly make custody/bond determinations and approve final the arrangements for alien removals.

2. I have been involved in making final arrangements for the removal of Somali nationals originating from the St. Paul District Office. My office's ability to remove aliens to Somalia is of special concern in light of the fact that Minnesota has the highest concentration of Somali nationals in the United States. Both the local media and Minnesota

State agencies have reported the Somali population in Minnesota to be between 26,000 and 50,000.

3. The St. Paul District Office currently has 146 Somali nationals who are currently subject to administrative orders of removal issued by the Immigration Court in Minnesota or the Board of Immigration Appeals in Virginia.

4. The St. Paul District Office regularly encounters Somali nationals who are subject to detention under the Immigration and Nationality Act (INA). Detention status is determined after considering flight risk, danger to public safety, and mandatory custody based on previous criminal convictions. From January 1998 through May 2001, the St. Paul District Office has initiated 75 new removal proceedings against Somali nationals detained in INS custody. (See Attachment). That is an average of nearly 2 new detained Somali cases per month.

5. In light of the number of Somali cases processed by my office, especially detained cases involving criminal aliens found to have committed "particularity serious crimes" (as defined by the INA), the prompt and orderly enforcement of final removal orders is of great importance.

7/17/01
Date

/s/
Scott Baniecke
Assistant District Director –
Detention, Deportation, and Parole
U.S. Immigration and Naturalization Service
2901 Metro Drive, Room 100
Bloomington, MN 55425



UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 2-2324MNST

KEYSE G. JAMA,
Appellee,

v.

IMMIGRATION AND NATURALIZATION SERVICE,
Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA.

The motion to recall the mandate is granted and the mandate is stayed until the Supreme Court of the United States takes action on Mr. Jama's petition for certiorari.

(5362-010199)

November 10, 2003

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit